92-326

Supreme Court, U.S.
FILED
AUG 18 1992
OFFICE OF THE CLERK

Docket No._____

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

October Term, 19____

In re JESSIE D. McDONALD,
Petitioner,

On Application for Extraordinary Relief
To The Tennessee Supreme Court

PETITION FOR WRIT OF MANDAMUS AND PROHIBITION

For the Petitioner:

Jessie D. McDonald, Pro se
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QUESTIONS PRESENTED

1. Whether due process of law permits the state supreme court to single McDonald out and require a surety bond for a motion for temporary injunction, when other parties under the same circumstances, are not required to do so ?

2. Whether due process of law permits the state supreme court to single out McDonald, for discrimination and deny him of the right to an appeal under the pauperis oath, without a hearing by the court ?

3. Whether the chancery court had jurisdiction to enter a judgment against any of the defendants, in Case No. 87-76-I ?

4. Whether McDonald has standing to seek relief in a cross-complaint, when he is a party to the original action, in his individual capacity ?

Exceptional Circumstances

The Petitioner, Jessie D. McDonald respectfully submit this application for Writ of Mandamus and Prohibition, to show this Court that this application is in aid of this Court's appellate jurisdiction, and the Chancery Court has proceeded against him, in his individual capacity, in absence of jurisdiction, to unlawfully interfere with the lawful operations of the Yellow cab Company,Inc., to eliminate competition, in conflict with a previous decision of this Court.

The chancery court further discriminated against McDonald and refused to set a hearing for an application for extraordinary relief, as required under Rule 29 of [illegible] Practice, for Special Procedures for [illegible]nterlocutory Relief in Civil Cases.

[illegible]d will further show this Court that the state [illegible]e court has singled him out, for discrimination denied him of access to the court, absence of

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jurisdiction to do so, by issuing an order that denies him the right to appeal in forma pauperis, without a hearing by the court.

The state supreme court has further discriminated against McDonald and refused to consider a Motion for Temporary Injunction, pending a final decision being rendered in this Court, under case no. 91-8581.

The petitioner, after having shown this Court that there are exceptional circumstances warranting the exercise of the Court's discretionary powers, further states that, there is no other court that has appellate jurisdiction over the Tennessee Supreme Court, and adequate relief cannot be obtained in any other form or from any other court.

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Respondents

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Nashville, Tenn. 37219

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Opinions Below

On December 28th., 1987, the Chancery Court issued a final order of judgment and permanent injunction against all of the defendants. [Appendix "A"]

On March 22, 1988, the Chancery Court entered its order, dispaupering McDonald and denied him of the right to appeal.[Appendix "B"]

On December 12th., 1988, the circuit court entered its order, refusing to set aside the chancery court judgment. [Appendix "C"]

March 23rd., 1989, based on the above judgment of the chancery court, the Tennessee Supreme Court denied McDonald the right to proceed in the appellate courts of Tennessee, without posting a surety bond. [Appendix "D"]

November 27th., 1991, the Fifth Circuit Court for Davidson County, dismissed an appeal under the pauperis oath, without a hearing, based on the order of the state

supreme court and a previous order from this Court.[Appendix "E"]

May 21, 1992, the state supreme court refused to consider a Motion for Leave to Proceed in Forma Pauperis. [Appendix "F"]

[Orders set out verbatim in the Appendix]

GROUNDS FOR THIS COURT'S JURISDICTION

The Tennessee Courts has acted in absence of jurisdiction, to singled McDonald out for discrimination and denied equal protection and due process under the laws of Tennessee and further denied access to the courts of Tennessee, to seek relief under the pauperis oath.

JURISDICTION

The judgment sought to be reviewed was entered on May 21st., 1992; and there was no Motion to Rehear. The petitioner believes that 28 § 1651(a),U.S.C.A. confer on this Court jurisdiction to review the judgment or decree on question, and grant injunctive relief.

CONSTITUTIONAL PROVISIONS

Fourteenth Amendment to the United States Constitution: Section 1;

" All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of the laws."

[Emphasis added to pertinent sections]

Tennessee State Constitution:

Article 1, § 22:

No Perpetuities or Monopolies

" That perpetuities and monopolies are contrary to the genius of a free state, and shall not be allowed. "

STATEMENT OF THE CASE

The Respondent, Yellow Cab Metro,Inc. filed its complaint in the Davidson County Chancery, at Nashville, Tennessee, under Docket No. 87-76-1, seeking injunctive relief against , " JESSIE D. McDONALD, individually, and JESSIE D. McDONALD, d/b/a McDONALD ENTERPRISES, and YELLOW CAB COMPANY, INC. and YELLOW CAB COMPANY,INC. OF NASHVILLE and FRANKLIN " [which involves a Williamson County corporation]

The service of process was conducted by serving McDonald, at his home, in Nashville, Tennessee. The process for McDonald, individually was accepted and the other process was refused. On another date, the officer returned with the summons for the Yellow cab Co.,Inc., which was accepted under protest.

After unsuccessfully arguing Motions to Dismiss, based on lack of jurisdiction in the trial court, the matter was

tried before a jury of twelve members, and a judgment was rendered against him, in the form of a permanent injunction. [Appendix "A"]

A Notice of Appeal was timely filed, with a pauperis oath, [which was approved by the clerk of the court, as permitted under Rule 18 of Tennessee Rules of Civil Procedure, since the trial judge had previously granted leave to file a cross-complaint] but the case was never transferred to the court of appeals.

After the expiration of approximately ninety (90) days, the trial court entered an order, depauperizing McDonald on March 22nd., 1988, without a remand order being issued by the appellate court.[Appendix "B"]

McDonald filed his lawsuit in the circuit court, under Docket No. 88-3078, seeking to have the chancery court judgment set aside, based on fraud. On December 12th., 1988 the circuit court dismissed that action.

[Appendix "C"]

McDonald timely filed his appeal to the court of appeals , which transferred the matter to the state supreme court. On March 23rd., 1992, the state supreme court issued its order, [Based on Appendix "B"] denying McDonald of all future rights to proceed in forma pauperis, and the right to be heard at a hearing, by a court of competent jurisdiction. [Appendix "D"]

McDonald was again brought before the trial court, on contempt of court charges, and found guilty and fined $50.00, and the Yellow Cab Metro,Inc. appealed the decision of the chancery court, which was affirmed, and taxed McDonald with one half of the cost for their appeal. The state supreme court declined to hear the matter, and that case is presently pending before this Court on Petition for Writ of Certiorari, under Docket No. 91-8581.

As a result of the final judgment at issue, the Metropolitan Government for Nashville and Davidson County are attempting to enforce their rules and

regulations for taxicab companies, upon McDonald, individually, which resulted in another lawsuit being filed in the chancery court, under Docket No. 92-1302-I, before Chancellor Irvin H. Kilcrease,Jr., who recused himself and the case was assigned to Chancellor C. Allen High.

Chancellor High denied McDonald of a hearing for extraordinary relief, as allowed under Rule 29.(03) and (.04) of Local Rules of Practice.

May 21st.,1992 the state supreme court refused to consider the Motion for Leave to Proceed in forma pauperis, and ordered the clerk of the court, to lodge the application in the clerk's office and to take no further action, until such a time a cost bond is posted.

[Appendix "E"]

On June 5th., 1992 and July 10th., 1992, the chancellor dismissed the action against all of the defendants. A Notice of Appeal, with pauperis oath was timely filed.

ARGUMENT

WHETHER THE TENNESSEE COURTS EXCEEDED THE JURISDICTION CONFERRED, TO UNLAWFULLY DISCRIMINATED AGAINST McDONALD AND DENIED HIM EQUAL PROTECTION AND DUE PROCESS OF LAW ?

The Petitioner, Jessie D. McDonald, individually, is a driver for his family owned taxicab company [Yellow Cab Co.,Inc.], which has its principal place of business in Spring Hill and Franklin, which is located in Maury and Williamson County, Tennessee.

However, the lawsuit against him, was initiated by the Yellow Cab Metro,Inc., filing their complaint in the Davidson county Chancery Court, which named other defendants "McDonald Enterprises and Yellow Cab Co.,Inc.", but McDonald, individually and McDonald Enterprises are the only parties that are located in the Davidson County area. The process for service was made by service on McDonald, at his home, in Nashville.

The lawsuit was based on unfair trade competition and

alleged that the Yellow Cab Co.,Inc. of Franklin, Tennessee was engaged in unfair trade practices, by using the name "Yellow Cab", when they had obtained a "secondary meaning" through the use of the said name.

Under Tennessee law, the service of process can be served in any county, where a material defendant can be found. [§§ 20-4-104 and 40-15-101,TCA]

Therefore, it is clear that McDonald, individually and the McDonald Enterprises are not material defendants, since the allegations in the complaint, were directed towards the use of the name "Yellow Cab" only. The Yellow Cab Co.,Inc. [Tennessee Corporation] is a separate and distinct entity of its own and only the Yellow Cab Co.,Inc. is a material defendant to that lawsuit. *Dixon v. Gunter*, 636 S.W. 2d 437 (Tenn. Ct. of App., 1982) and since there is no office location for the Yellow Cab Co.,Inc., in Davidson County, proper jurisdiction lies in either Maury or Williamson County. State courts have no

jurisdiction of local actions brought in wrong county, and consent cannot give jurisdiction. *Curtis v. Garrison*, 364 S.W. 2d 933, 211 Tenn. 339. This Court has previously stated that: "*In cases in personam, where there are adverse parties, the court must have power over the subject-matter and the parties to have jurisdiction*". *Grignon's Lessee v. Astor*, 43 U.S. 319, 2 How. 319, 11 L.Ed. 283. Further, the service of process upon McDonald's home, for the Yellow cab Co.,Inc., was not in accord with the laws of Tennessee, to bring in the said corporation and the return by the sheriff's department, is considered as a false return and a judgment obtained on such return , is a fraud. *Hawley v. Lavelle*, 602 S.W. 2d 499 (Tenn. Ct. of App., 1980).

Further, even if the chancery court did have jurisdiction over the defendants, the complaint failed to state a cause of action, to give the court subject-matter jurisdiction, when the complaint failed to allege the words "fraud, deception or the palming off effect". To constitute unfair

trade practices in a trade name protection lawsuit, there must be the allegation or charge of "fraud, deception or the palming off effect", otherwise the lawsuit cannot be successful. *Simmons Medicine Co. v. Mansfield Drug Co.*, 93 Tenn. 84, 23 S.W. 165(1893).

At the beginning of the chancery proceedings, McDonald brought this matter to the attention of the chancellor, and the judge in the circuit court, on many occasions, even by Motion to Dismiss, which all were rejected and denied. Prohibition will issue if the lower court is clearly without jurisdiction over the petitioner, who, at the outset, objected to the jurisdiction, had preserved his rights by appropriate procedure and had no other remedy,... *In re Chicago, R.I. & P. Ry. Co.*, 41 S.Ct. 288, 255 U.S. 273, 65 L.Ed. 631. Prohibition is a remedy of exigency, in exclusion of other process of relief, and is directed against unwarranted assumptions of jurisdiction or excess of jurisdiction. *Petition of U.S.*, 44 S.Ct. 130,

263 U.S. 389, 68 L.Ed. 351.

Assuming that the trial court had jurisdiction to render the aggrieved judgment, it exceeded the jurisdiction conferred, to deprive McDonald of the right to an appeal. Within the allowed thirty (30) days, McDonald filed his Notice of Appeal with a pauperis oath, which had been approved by the clerk of the court, since the chancellor had previously granted leave to file the cross complaint, in forma pauperis.[Rule 18,Tennessee Rules of Civil Procedure] Chancellor Kilcrease issued an order on March 22nd., 1988 [Appendix "B"], denying McDonald the right to appeal in forma pauperis, in the absence of a remand order from the court of appeals, or state supreme court. The state supreme court has previously held that: " *Upon an appeal to this court and execution of the bond, the cause is immediately transferred to this court, and the court below had, after its rise, no longer any jurisdiction of the case. An entry of dismissal in the court*

below by the appellant is a nullity ". *Freeman v. Henderson*, 45 Tenn. 647. On the same subject, the state court of appeals said in case of *James v. Williams*, 20 Tenn. App. 420, 99 S.W. 2d 831: " *Lower court has no jurisdiction after an appeal is prayed and perfected, except on remand by appellate court and an order made thereafter by the lower court is void*".

Accordingly, the order [Appendix "B"] entered by Chancellor Kilcrease, depauperizing McDonald, is void as a matter of law, and the state supreme court has issued its order [Appendix "D"] , supported by the void judgment in Appendix "B" , to deny McDonald of the right to appeal in forma pauperis.

Further, even if there was a remand order issued from the appropriate appellate court, giving the chancery court jurisdiction, the order of the chancellor must be set aside and declared void, for the following reasons:

(1) The final judgment in the chancery court was

entered in the minute book on December 28th., 1987 [Appendix "A"]. The chancellor's order was entered in the minute book on March 22nd., 1988 [Appendix "B"], nearly ninety (90) days later. If the chancery court chose to exercise its powers to depauperize McDonald, it must be done within thirty (30) days of the judgment being entered in the minute book. *Locke v. Smith Funeral Ser. Corp.*, 180 Tenn. 18, 171 S.W. 2d 272 (1942). The power to inquire into the truthfulness of the pauperis oath, belongs to the trial court, and must be invoked therein, within 30 days or the appeal will be treated as regularly taken. *Dunn v. Moore*, 22 Tenn. App. 412, 123 S.W. 2d 1095 (1938); *Perry v. Carter*, 188 Tenn. 409, 219 S.W. 2d 905 (1949).

But, even if the trial court had acted within the allowed 30 days, with a remand order, the aggrieved judgment must be set aside, where the chancellor acted to dispauper McDonald, in absence of jurisdiction, since the law in

Tennessee clearly states that " a defendant cannot be dispaupered upon the evidence of his adversary in the suit". *Hewell v. Cherry*, 25 Tenn. App. 420, 158 S.W. 2d 370 (1941) and there was no testimony by a disinterested person, to allege that the oath of poverty was probably untrue, and therefore, McDonald was entitled to proceed in forma pauperis and it was not within the discretion of the trial judge to order such defendant to execute a contest bond. *Fiske v. Grider*, 171 Tenn. 565, 106 S.W. 2d 553 (1937); also see Appendix "E", where the trial judge refused to conduct a hearing on the issue. Notice and opportunity to be heard are minimal requirements of due process. U.S.C.A., Amend. 14. *In re Riggs*, 612 S.W. 2d 461, cert. den. *Riggs v. Terrazas*, 101 S.Ct. 1370, 450 U.S. 921, 67 L.Ed. 2d 349, also see *Memphis Light, Gas and Water Division v. Craft*, 98 S.Ct. 1554, 436 U.S. 1, 56 L.Ed. 2d 30. The purpose of Notice under due process clause is to apprise affected individual of, and permit

adequate preparation for, an impending hearing. Id Due process requires that deprivation of life, liberty or property by adjudication be preceded by Notice and opportunity for a hearing appropriate to nature of case. *In re Armstrong Glass Co.*, 502 F. 2d 159.

Therefore, with respect to Appendix "D", the state supreme court exceeded the jurisdiction conferred, by delegating judicial powers to the clerk of the court, to hear applications for leave to proceed in forma pauperis, contrary to state law. The duties prescribed by the Acts of 1821, Chapter 22, to the several clerks of record in this state, are not judicial, but simply ministerial, and if a party chooses to take and subscribe the oath required by that act, the clerk have no discretion to exercise in granting or refusing the oath for which he applies. *Morris v. Smith, 1 Tenn. Cas. (Shannon) 27 (1849); and Snyder v. Summers, 69 Tenn. (Lea) 481 (1878).* There has never been a Motion to Dispauper McDonald, in any court,

state or federal, but even if it has, the state supreme court is without powers or jurisdiction to pass on such a motion. *In re Holiday's Estate*, 180 Tenn. 646, 177 S.W. 2d 826 (1944).

Therefore, taking the oath for poor persons in case of appeal and tendering it to the clerk, although he refuses to accept it, is a substantial compliance with the requirements of the law, and the appeal is thereby perfected. *State v. Gannaway*, 84 Tenn.(16 Lea.) 124 (1855).

The state supreme court exceeded the jurisdiction conferred, to unlawfully discriminate against McDonald, by singling him out and ordered the clerk of the court to refuse to accept a Motion for Temporary Injunction, without a cost bond , when other parties are not required to do so. Under Tennessee law, whenever a governmental body acts to injure an individual, the constitution requires that the act be consonant with due process of law. *Kelly*

v. Metropolitan County Bd. of Ed. of Nashville and Davidson County, Tennessee, 293 F. Supp. 485, and a law which did not alike embrace all persons and equally affects all persons who exist or might come into like state and circumstances, was a partial and "special law" and hence not the "law of the land" within the meaning of the constitution of 1796. *Tipton County v. Rogers Locomotive & Machine Works,* 103 U.S. 523, 26 L.Ed. 340. McDonald is the only individual that the state supreme court has issued an order to affect, in a matter such as the one at issue [Appendix "D"] and to be consistent with due process of law, that Order must be set aside.

The trial court exceeded the jurisdiction conferred and dismissed the counter claim, on grounds, McDonald, individually, did not have standing to bring such a lawsuit. However, the counter claim was based on the fact, the actions of the plaintiff [Yellow Cab Metro,Inc.] was interfering with McDonald's ability to earn an income, as

a driver for his family owned business. The trial court's decision created a conflict with previous decisions from this Court, where this Court has held that: " a litigant has standing to seek redress for injuries done to him..." . *Laird v. Tatum*, 92 S.Ct. 2318, 408 S.Ct. 1, 33 L.Ed. 2d 154; Reh. Den. 93 S.Ct. 94, 409 U.S. 901, 34 L.Ed. 2d 165; and further held that: " Standing to sue", means that a party has sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy " . *Sierra Club v. Morton*, 92 S.Ct. 1361 and in the instant case, the trial court implied that although McDonald was being sued in his individual capacity, he did not have standing to counter sue, in his individual capacity, which has created a conflict with this Court's decisions.

CONCLUSION OF FACTS AND LAW

This petition has clearly shown this Court several occasions, where the Tennessee Courts has exceeded the jurisdiction conferred, even under state law and has singled McDonald out for discrimination, contrary to equal protection and due process of law, as guaranteed under the Fourteenth (14th.) Amendment to the United States Constitution.

Accordingly, McDonald has presented this Court with an issue and questions, involving constitutional claims, which must be addressed by this Court, otherwise, this case has set a dangerous precedent, contrary to due process and if not clarified by this Court, other lower courts might unwisely choose to adopt.

This Court has previously held that, only exceptional circumstances, amounting to a judicial usurpation of power, justified the invocation of mandamus. *Allied Chemical Corp. v. Daiflon, Inc.*, 101 S.Ct. 188, 449 U.S.

33, 66 L.Ed. 2d 193. Mandamus issues to judges of inferior court commanding them to do justice according to powers of their office whenever the same is delayed. *Ex Parte Bradley , 74 U.S. 364, 7 Wall. 364, 19 L.Ed. 214.* The office of the common law writ of prohibition is to prevent an unlawful assumption of jurisdiction. *Ex Parte Gordon,* 104 U.S. 515, 26 L.Ed. 814, and " prohibition " is a remedy of exigency, in exclusion of other process of relief, and is directed against unwarranted assumption of jurisdiction or excess of jurisdiction. *Petition of U.S.,* 44 S.Ct. 130, 263 U.S. 389, 68 L.Ed. 351. It is clear that McDonald objected to the trial court's jurisdiction at the outset, and has preserved his right for writ of prohibition, since he was denied the right to an appeal. *In re Chicago, R.I. & P. Ry.Co.,* 41 S.Ct. 288, 255 U.S. 273, 65 L.Ed. 631.

RELIEF SOUGHT

Wherefore, the Petitioner, Jessie D. McDonald, pro se, pray this Court to grant relief in the form, as set out below:

(1) Issue a writ of prohibition / or in the alternative a writ of mandamus, or both to the trial court, commanding Chancellor Kilcrease to issue an order, setting aside his judgments in Appendix "A" and "B" , for lack of jurisdiction; with further instructions, to take jurisdiction over the counter claim, which was previously dismissed;

(2) Issue a writ of mandamus, commanding Judge Walter Kurtz, to set aside his previous order in Appendix "E" , for lack of jurisdiction, with instructions to proceed with this case, in a manner as required by the laws in Tennessee;

(3) Issue a writ of mandamus against Chancellor C. Allen High, commanding him to do justice according to the powers of his office, which he has delayed;

(4) Issue a writ of mandamus against justices of the Tennessee Supreme Court, commanding them to set aside the previous orders of that court, in Appendix "D" and any other related order, for lack of jurisdiction; with instructions to do justice according to the powers of their office; and further instructions, not to interfere with lawful and orderly appeals by McDonald from the lower courts;

(5) Issue a writ of mandamus against the various clerks of the Tennessee Courts, commanding them to stay within their ministerial duties, and to accept pleading submitted by McDonald, that are submitted in accord with the laws of Tennessee, as required by other citizens and litigants;

(6) All other and further relief the Court deems proper, to eliminate any further unlawful discriminations against McDonald.

This being the 27th., day of July, 1992.

Respectfully Submitted.

_____

Jessie D. McDonald, pro se

PROOF OF SERVICE

I, Jessie D. McDonald, after first being duly sworn to, in according to the laws of Tennessee, states that, a copy of this application was served upon each respondent in this matter, and that three (3) copies were served upon each attorneys of record, and the Tennessee Attorney Generals office, who is the attorney that represents the various judges and clerks of the State of Tennessee.

Service was conducted by depositing the same, in the U.S. Mail, with the proper first class postage affixed thereon, and mailed to the addressed as set out in the front of this petition.

This being the 24th., day of July, 1992.

COUNTY OF DAVIDSON)
STATE OF TENNESSEE) _____
Jessie D. McDonald

Before me, on the
above date.

_____
Notary Public

My Commission Expires: March 25th., 1995

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IN THE CHANCERY COURT FOR
DAVIDSON COUNTY,TENNESSEE
PART I

YELLOW CAB METRO,INC.,
Plaintiff,

vs. No. 87-76-I

JESSIE D. McDONALD,
individually, and JESSIE D.
McDONALD, d/b/a McDONALD Order filed:12/28/87
ENTERPRISES and YELLOW CAB
COMPANY,INC. and YELLOW CAB
COMPANY OF NASHVILLE AND
FRANKLIN,
Defendant[s]

FINAL ORDER OF JUDGMENT
AND PERMANENT INJUNCTION

This cause came on to be heard before the Honorable Irvin H. Kilcrease, Jr., Chancellor of Part I of the Davidson County Chancery Court on December 17, 1987 to determine what relief, if any, should be granted to plaintiff, Yellow Cab Metro, Inc. as a result of the special jury verdict, and argument of counsel, this Court finds that injunctive relief should lie as a remedy against

defendants as follows:

1. Defendants are enjoined jointly and severally from procuring advertising of any nature whatsoever in the Davidson County area;

2. Defendants are enjoined jointly and severally specifically from procuring advertising from South Central Bell for the Nashville area under the name Yellow Cab Company, Inc.;

3. Defendants jointly and severally are enjoined from picking up and dropping off passengers in the Davidson County area under the name Yellow Cab Company,Inc. and

4. Defendants are enjoined jointly and severally from dispatching vehicles in the Davidson County area under the name Yellow Cab Company, Inc.

The counter claim filed by defendants against Yellow Cab Metro,Ins. is dismissed.

Costs in this cause shall be taxed to defendants,

McDonald Enterprises, Yellow Cab Company,Inc., and Yellow Cab Company of Nashville and Franklin, Inc., for which judgment shall issue, if necessary.

IRVIN H. KILCREASE,JR,
Chancellor

Approved for entry:
Jay R. Sloby,
Attorney at Law
One Nashville Place
Suite 1810
150 Fourth Ave. North
P.O. Box 2509
Nashville, Tennessee 37219
(615) 252-6400

IN THE CHANCERY COURT FOR
DAVIDSON COUNTY, TENNESSEE
PART I

YELLOW CAB METRO,INC.,
Plaintiff,

vs. No. 87-76-I
Order filed: 3/22/88

JESSIE D. McDONALD,
Defendant.

ORDER

This matter came before this Court on the 14th., day of March, 1988, before the Honorable Irving H. Kilcrease, Jr., Chancellor, on Defendant Jessie D. McDonald's motions for leave to Appeal in forma pauperis and to Stay Enforcement of Judgment. Upon hearing testimony of Defendant, Jessie D. McDonald, statements of counsel, and Defendant McDonald, and consideration of the entire record in this case, the Court found that the motions were not well taken and made the following findings with

respect to Defendant's motion to proceed in forma pauperis:

1. Defendant McDonald is the owner of McDonald Enterprises.

2. McDonald is self employed as a taxi driver.

3. He is free to work as much as he desires; however, he chosen to work only a limited amount.

4. McDonald has previously attempted to represent McDonald Enterprises, stating that he did not own it. He subsequently submitted an affidavit stating that the business had been transferred to him.

5. McDonald has previously hired a court reporter in this case.

6. The Court is oblieged to consider if McDonald is able to pay court costs.

7. In considering the evidence, including the earlier proceedings in this case, the court finds that the evidence does not preponderate in favor of Defendant McDonald

being entitled to proceed in forma pauperis.

8. Defendant McDonald is not unable to bear the costs of appeal, he is unwilling to bear such costs.

The court made these further findings with respect to Defendant McDonald's motion for stay of enforcement.

1. The appropriate criteria for the grant of a stay of enforcement of the order in this case is the same criteria used in considering whether injunctive relief is appropriate, as follows:

(a) whether the moving party is likely to succeed on the merits;

(b) whether the moving party will be irreparably harmed if the stay is not granted.

(c) whether the public interest is served by the grant of the stay.

2. Defendant is not likely to succeed on the merits; the questions at issue have been passed upon by both the jury and the trial court.

3. Defendant McDonald will not suffer irreparable harm if this court does not stay enforcement of the final order in this case. Defendant McDonald is licensed to operate taxis in two counties besides Davidson County and can continue to operate in those counties.

Accordingly it is ORDERED, ADJUDGED AND DECREED that Defendant McDonald's motion for leave to appeal in forma pauperis is denied. It is further ORDERED that Defendant McDonald shall be required to file a bond for costs of the appeal in the amount of Seven Hundred Fifty Dollars ($750.00).

It is further ORDERED that McDonald's motion to stay enforcement of the judgment entered by this court is denied.

IRVIN H. KILCREASE, JR.,
Chancellor

APPROVED FOR ENTRY:
Jay R. Sloby,
Attorney of Record

IN THE THIRD CIRCUIT COURT
FOR DAVIDSON COUNTY, TENNESSEE

JESSIE D. McDONALD

VS. NO. 88C-3078

YELLOW CAB METRO,INC.

ORDER

This is a pro se case in which the plaintiff in his complaint sought an injunction from this court restraining the enforcement of an order issued in the case of Yellow Cab Metro,Inc. v. Jessie D. McDonald, et. al., number 87-76-I, Chancery Court for Davidson County, Tennessee. Later the complaint was amended whereby the plaintiff sought a declaratory judgment respecting the validity of that order. On October 17, 1988 this Court entered an order denying the plaintiff's application for a temporary injunction. This case presently is before the

Court on plaintiff's motions for summary judgment and for a declaratory judgment.

The plaintiff alleges that the Chancery order should be stayed due to fraud. Where an order is procured through fraud a Court arguably could stay an order of another court. 21 C.J.S. Courts § 501. There is no genuine issue as to any material fact with respect to the allegation of fraud. There is no evidence whatsoever of fraud. The Court finds that the defendant is entitled to a judgment as a matter of law on that claim.

The alternative relief sought by the plaintiff is a declaratory judgment. The trial judge has broad discretion in deciding whether a declaratory judgment should be entertained and that discretion should be exercised cautiously. East Sevier County Utility District of Sevier County v. Wachovia Bank & Trust Co., 570 S.W. 2d 850, 852 (Tenn.,1978). A Court should refuse to enter a declaratory judgment where, if rendered, it would not

terminate uncertainty or controversy giving rise to the proceedings. Miller v. Miller, 149 Tenn. 463, 487, 261 S.W. 965 (Tenn., 1924). Any declaratory judgment in this case would not terminate any uncertainty or controversy because the underlying issue in this case is the validity of a Chancery Court order and whether the plaintiff can be held in contempt for its violation. Any declaratory judgment by this Court of rights with respect to that order would not be binding on the Chancery Court in any event.

For the reasons stated above

IT IS ORDERED that all claims asserted by the plaintiff in this case are dismissed with prejudice.

IT IS FURTHER ORDERED that the costs of this action are taxed to the plaintiff, for which execution may issue if necessary.

MATTHEW J. SWEENEY, III, Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

JESSIE D. McDONALD,

Petitioner-Appellant,

v. **Filed: 3 / 23 / 89**

YELLOW CAB METRO,INC.,

Respondent-Appellee.

ORDER

On March 9, 1989, the Court of Appeals entered an order directing the clerk to file this appeal in the Supreme Court. On March 14, 1989, the Appellant, Jessie D. McDonald, pro se , moved this Court to suspend the enforcement of a judgment, rendered by the Chancery Court of Davidson County, in case No. 87-76-I, Yellow Cab Metro,Inc. v. Jessie D. McDonald, et. al., which is the basis for the present lawsuit brought in the Circuit

Court of Davidson County. Appellant avers that the Chancery Court lacked subject matter jurisdiction to enter the judgment and the judgment is void, as a matter of law, since it was obtained through fraud. In the Circuit Court suit, petitioner sought injunctive relief to enjoin the execution of a permanent injunction, issued by Chancellor Irvin H. Kilcrease, in Case No. 87-76-I. Judge Matthew J. Sweeney, III, by order entered December 12, 1988, dismissed all claims asserted by plaintiff, McDonald, with prejudice. It is from this order that Plaintiff-Appellant, McDonald appeals.

On page 34-36 of the record on appeal, we find an order entered March 22, 1988, by Chancellor Kilcrease, in Case No. 87-76-I, found in Minute Book 268, Page 26, in the Chancery Court for Davidson County. In the Chancery Court suit, which is the basis for the present suit and appeal, Chancellor Kilcrease denied McDonald's motion for leave to appeal in forma pauperis. McDonald was

required to file a bond for costs of the appeal. The chancellor found: " Defendant McDonald is not unable to bear the costs of appeal, he is unwilling to bear such costs."

Jessie D. McDonald is no stranger to the United States Supreme Court and is no stranger to the appellate courts of this state. On February 21, 1989, the United States Supreme Court, In re Jessie D. McDonald, Petitioner, 109 Supreme Court 993 (1989), directed the clerk of that court "not to accept any further petitions from petitioner for extraordinary writs . . . unless he pays the docketing fee. . ." The Court stated: " Every paper filed with the clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the Court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice. The continual processing of petitioner's frivolous requests for extraordinary writs does not promote that end. Although we have not done so previously, lower courts have issued orders intended to curb serious abuses by persons proceeding in forma pauperis. Our order here prevents petitioner from proceeding in forma pauperis when seeking extraordinary writs from the Court."

Jessie McDonald has continually abused his right to file appeals in the appellate courts without payment of court costs. His costs in the appellate courts of this state are presently in excess of $6,000.00.

Based upon the record in this cause, which includes the Order of Chancellor kilcrease in which he found that appellant "is not unable to bear the costs of appeal, he is unwilling to bear such costs," the clerk of this Court is directed not to accept any further pleading from Jessie McDonald in this appeal until proper bond for costs has been made. Petitioner's appeal will be dismissed unless a proper bond is made with the clerk of this Court within thirty (30) days. This Court will take no action on appellant's " Motion to Suspend Enforcement of the Judgment," until bond is made.

The clerk is further directed that all appeals filed in the appellate courts of this state must be accompanied by a bond to secure costs unless proper proof of indigency,

satisfactory to the clerk, is submitted in lieu of such bond. The clerk is empowered to hold any necessary evidentiary hearings to determine the sufficiency of such bond or proof of indigency.

Jessie D. McDonald is further ordered to make satisfactory arrangements with the clerk of this Court to make payment of the accrued costs owed the State of Tennessee.

This the 23rd., day of March, 1989.

PER CURIAM

IN THE FIFTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

METROPOLITAN GOVERNMENT

NO. 91C-3873
91C-3874
91C-3875

VS.

JESSIE McDONALD

ORDER

These cases are all on appeal from the Metropolitan Court for Ordinance violations. The appellant, Jessie D. McDonald, has attempted to forgo the requirement of bond by use of a pauper's oath in each of the three (3) cases. Given the decision of the Supreme Court of the United States and the case of In re Jessie McDonald __U.S. ___ 109 S.Ct. 993 (1989) and the Supreme Court of Tennessee in McDonald v. Yellow Cab, unreported,

March 23, 1989, this Court orders that the appellant not be allowed to proceed on pauperis oath. The appellant has fifteen (15) days to substitute appropriate appeals bonds or these appeals are dismissed.

This the 27th., day of November, 1991.

Walter C. Kurtz, Judge

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

JESSIE D. McDONALD,

Petitioner,

vs. DAVIDSON EQUITY

SGT. E. BOGUSKIE, et. al.,

Respondent. 01-S-01-9205-CH-00060

ORDER

A petition for Extraordinary Appeal and Motion for Leave to Appeal in forma pauperis have been lodged with the clerk of this Court by Petitioner, Jessie McDonald.

The clerk is hereby directed to take no further action in this case, pending compliance by petitioner with orders entered on March 23, 1989 in the case of Jessie D. McDonald v. Yellow Cab Metro,Inc. and on July 3, 1989 in the case of Jessie D. McDonald v. The Metropolitan Government, et. al.

Entered this 21st., day of May, 1992.

PER CURIAM